

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1717 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 financial institutions and commercial law.
- 4 Page 4, line 1, delete "or" and insert "**or**".
- 5 Page 14, between lines 29 and 30, begin a new paragraph and insert:
- 6 "SECTION 7. IC 23-2-5-9 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) To be
- 8 enforceable, every contract for the services of a loan broker shall be in
- 9 writing and signed by the contracting parties.
- 10 (b) At the time a contract for the services of a loan broker is signed,
- 11 the loan broker shall provide a copy of the signed contract to each of
- 12 the other parties to the contract.
- 13 (c) **Every contract for the services of a loan broker must include**
- 14 **the following statement:**
- 15 **"No statement or representation by a loan broker is valid or**
- 16 **enforceable unless the statement or representation is in**
- 17 **writing."**
- 18 ~~(c)~~ (d) This section does not apply to a contract that provides for the
- 19 payment of referral fees by a lender or a third party."
- 20 Page 19, between lines 23 and 24, begin a new paragraph and insert:
- 21 "SECTION 10. IC 23-2-5-15 IS AMENDED TO READ AS
- 22 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. Any person who
- 23 violates this chapter **or any rule or regulation adopted under this**
- 24 **chapter**, in connection with a contract for the services of a loan broker,
- 25 is liable to any person damaged by the violation, for the amount of the
- 26 actual damages suffered, interest at the legal rate, and attorney's fees.
- 27 If a person violates any provision of this chapter **or any rule or**
- 28 **regulation adopted under this chapter**, in connection with a contract
- 29 for loan brokering services, the contract is void, and the prospective
- 30 borrower is entitled to receive from the loan broker all sums paid to the
- 31 loan broker."

1 Page 19, line 26, reset in roman "a".

2 Page 21, line 42, delete "a".

3 Page 23, between lines 16, and 17, begin a new paragraph and
4 insert:

5 "SECTION 17. IC 23-19-6-5, AS ADDED BY HEA 1555-2007,
6 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2008]: Sec. 5. (a) The commissioner may:

8 (1) issue forms and orders and, after notice and comment, may
9 adopt and amend rules necessary or appropriate to carry out this
10 article and may repeal rules, including rules and forms governing
11 registration statements, applications, notice filings, reports, and
12 other records;

13 (2) by rule, define terms, whether or not used in this article, but
14 those definitions may not be inconsistent with this article; and

15 (3) by rule, classify securities, persons, and transactions and adopt
16 different requirements for different classes.

17 (b) Under this article, a rule or form may not be adopted or
18 amended, or an order issued or amended, unless the commissioner
19 finds that the rule, form, order, or amendment is necessary or
20 appropriate in the public interest or for the protection of investors and
21 is consistent with the purposes intended by this article.

22 (c) Subject to Section 15(h) of the Securities Exchange Act of 1938
23 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of
24 1940 (15 U.S.C. 80b-18a), the commissioner may require that a
25 financial statement filed under this article be prepared in accordance
26 with generally accepted accounting principles in the United States and
27 comply with other requirements specified by rule adopted or order
28 issued under this article. A rule adopted or order issued under this
29 article may establish:

30 (1) subject to Section 15(h) of the Securities Exchange Act of
31 1934 (15 U.S.C. 78o(h)) and Section 222 of the Investment
32 Advisors Act of 1940 (15 U.S.C. 80b-18a), the form and content
33 of financial statements required under this article;

34 (2) whether unconsolidated financial statements must be filed;
35 and

36 (3) whether required financial statements must be audited by an
37 independent certified public accountant.

38 (d) The commissioner may provide interpretative opinions or issue
39 determinations that the commissioner will not institute a proceeding or
40 an action under this article against a specified person for engaging in
41 a specified act, practice, or course of business if the determination is
42 consistent with this article. The commissioner shall charge a fee of one
43 hundred dollars (\$100) for an interpretive opinion or determination.

44 (e) A penalty under this article may not be imposed for, and liability
45 does not arise from, conduct that is engaged in or omitted in good faith
46 and reasonably believed to be conforming to a rule, form, or order of
47 the commissioner under this article.

(f) A hearing in an administrative proceeding under this article must be conducted in public unless the commissioner ~~for good cause consistent with this article determines that the hearing will not be so conducted.~~ **finds a statutory basis that would allow the hearing to be closed to the public.**

SECTION 18. IC 23-19-6-7, AS ADDED BY HEA 1555-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) Except as otherwise provided in subsection (b), records obtained by the commissioner or filed under this article, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for ~~public examination.~~ **inspection and copying.**

(b) The following records are ~~not public records~~ **confidential** and are not available for public ~~examination~~ **inspection and copying** under subsection (a):

(1) A record obtained by the commissioner in connection with an audit or inspection under IC 23-19-4-11(d) or an investigation under section 2 of this chapter.

(2) A part of a record filed in connection with a registration statement under IC 23-19-3-1 and IC 23-19-3-3 through IC 23-19-3-5 or a record under IC 23-19-4-11(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law and approved by the commissioner.

(3) A record that is not required to be provided to the commissioner or filed under this article and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure.

(4) ~~A nonpublic record~~ **Confidential records** received from a person specified in section 8(a) of this chapter.

(5) Any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

(6) A record obtained by the commissioner through a designee of the commissioner that a rule or order under this article determines has been:

(A) expunged from the commissioner's records by the designee; or

(B) determined to be ~~nonpublic or nondisclosable~~ **confidential** by that designee if the commissioner finds the determination to be ~~in the public interest and for the protection of investors.~~ **based on statutory authority.**

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 8(a) of this chapter, the commissioner may disclose a record

obtained in connection with an audit or inspection under IC 23-19-4-11(d) or a record obtained in connection with an investigation under section 2 of this chapter."

Page 25, line 39, delete "IC 23-11-1-15" and insert "IC 25-11-1-15".

Page 29, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 25. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "committee" refers to the interim study committee on mortgage lending practices and home loan foreclosures established by this SECTION.

(b) There is established the interim study committee on mortgage lending practices and home loan foreclosures. The committee shall study the following:

(1) The appropriateness of requiring state licensure for all mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers.

(2) The appropriate state agency or regulatory body to oversee the regulation of mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers.

(3) Other states' approaches to regulating mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers. In examining the regulatory approaches of other states under this subdivision, the committee shall attempt to identify those approaches that:

(A) incorporate an efficient or streamlined regulatory framework; or

(B) otherwise represent best practices for state regulation of mortgage lenders, loan brokers, originators, settlement service providers, and real estate appraisers.

(4) The causes of home loan foreclosures in Indiana.

(5) Whether legislative or regulatory solutions exist to:

(A) prevent or reduce the number of home loan foreclosures in Indiana; and

(B) prevent or reduce the occurrence of fraudulent practices in the home loan industry.

(6) Issues concerning the referral of appraisal companies by mortgage lenders, loan brokers, originators, or settlement service providers that have an:

(A) ownership or investment interest in or compensation arrangement with the appraisal companies; or

(B) immediate family member that has an ownership or investment interest in or compensation arrangement with the appraisal companies.

(7) Issues concerning the referral of settlement service providers by mortgage lenders, loan brokers, or originators that have:

(A) a business relationship or an ownership interest in the settlement service providers; or

- 1 **(B) an immediate family member that has a business**
2 **relationship or an ownership interest in the settlement**
3 **service providers.**
4 **(8) The appropriateness of requiring a person licensed under**
5 **IC 23-2-5 to notify the commissioner if the employment of a**
6 **person registered under IC 23-2-5 is terminated.**
7 **(9) Other topics that the committee considers relevant in:**
8 **(A) examining mortgage lending practices and home loan**
9 **foreclosures in Indiana; and**
10 **(B) devising solutions to the problems identified.**
11 **(c) The committee shall operate under the policies governing**
12 **study committees adopted by the legislative council.**
13 **(d) The affirmative votes of a majority of the voting members**
14 **appointed to the committee are required for the committee to take**
15 **action on any measure, including final reports.**
16 **(e) The committee shall report its findings and any**
17 **recommendations to the legislative council not later than**
18 **November 1, 2007. The committee's report to the legislative council**
19 **under this subsection must be in an electronic format under**
20 **IC 5-14-6.**
21 **(f) This SECTION expires January 1, 2008."**
22 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1717 as printed March 23, 2007.)

Senator BRAY